

Congress of the United States
Washington, DC 20515

October 8, 2019

The Honorable Gordon Sondland
U.S. Ambassador to the European Union
c/o Mr. Robert Luskin
Paul Hastings LLP
875 15th Street, N.W.
Washington, DC 20005

Dear Ambassador Sondland:

Pursuant to the House of Representatives' impeachment inquiry, we are hereby transmitting a subpoena that compels you to appear at a deposition on **October 16, 2019, at 9:30 a.m. at the Capitol, HVC-304**, and to produce the documents set forth in the accompanying schedule by **October 14, 2019**.

This subpoena is being issued by the Permanent Select Committee on Intelligence under the Rules of the House of Representatives in exercise of its oversight and legislative jurisdiction and after consultation with the Committee on Foreign Affairs and the Committee on Oversight and Reform. The deposition transcript and subpoenaed documents shall be collected as part of the House's impeachment inquiry and shared among the Committees, as well as with the Committee on the Judiciary as appropriate.¹ Your failure or refusal to comply with the subpoena, including at the direction or behest of the President, the White House, or the State Department, shall constitute further evidence of obstruction of the House's impeachment inquiry and may be used as an adverse inference against you and the President.

The Committees are investigating the extent to which President Trump jeopardized national security by pressing Ukraine to interfere with our 2020 election and by withholding a White House meeting with the President of Ukraine and military assistance provided by Congress to help Ukraine counter Russian aggression, as well as any efforts to cover up these matters.

Subpoena for Testimony

On September 27, 2019, the Committees requested that you appear for a deposition and provide documents in your personal possession, custody, or control relating to these matters by the date of your appearance.² The same day, the Committees sent a letter to Secretary of State

¹ See Letter from Chairman Jerrold Nadler, Committee on the Judiciary, to Chairman Adam B. Schiff, Permanent Select Committee on Intelligence; Chairwoman Maxine Waters, Committee on Financial Services; Chairman Elijah E. Cummings, Committee on Oversight and Reform; and Chairman Eliot L. Engel, Committee on Foreign Affairs (Aug. 22, 2019) (online at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/FiveChairsLetter8.22.pdf>).

² Letter from Chairman Eliot L. Engel, Committee on Foreign Affairs, Chairman Adam B. Schiff, Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, Committee on Oversight and

Michael Pompeo to inform the State Department of your scheduled deposition.³

On October 1, 2019, Secretary Pompeo sent the Committees a letter arguing that our request for testimony from you and four other current and former State Department officials “can be understood only as an attempt to intimidate, bully, and treat improperly the distinguished professionals of the Department of State.” He claimed that Congress lacks the authority to conduct depositions without agency representatives in the room, despite our clear authority and a long precedent of doing so. He argued that “the five officials subject to your letter may not attend any interview or deposition without counsel from the Executive Branch present.”⁴

Later that same day, the Committees responded to Secretary Pompeo’s concerns by sending a letter to Deputy Secretary of State John Sullivan. In that letter, we explained:

Secretary Pompeo is now a fact witness in the impeachment inquiry. He should not be making any decisions regarding witness testimony or document production in order to protect himself or the President. Any effort by the Secretary or the Department to intimidate or prevent witnesses from testifying or withhold documents from the Committees shall constitute evidence of obstruction of the impeachment inquiry.⁵

With respect to Secretary Pompeo’s challenge to the House deposition rules, we pointed out that when he served previously as a Member of the House of Representatives—and as one of the key Republican Members of the Benghazi Select Committee—he held exactly the opposite view. The House rule that protects witnesses in depositions was adopted by the House of Representatives in January 2019. The same rule has been in place for more than a decade under both Republican and Democratic Chairmen of the Committee on Oversight and Reform, and it was in place during Secretary Pompeo’s tenure on the Benghazi Select Committee.⁶ As we wrote to Deputy Secretary Sullivan:

Reform, to Ambassador Gordon Sondland, Department of State (Sept. 27, 2019).

³ Letter from Chairman Eliot L. Engel, Committee on Foreign Affairs, Chairman Adam B. Schiff, Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Michael R. Pompeo, Department of State (Sept. 27, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-09-27.EEC%20Engel%20Schiff%20to%20Pompeo-%20State%20re%20Depositions.pdf>).

⁴ Letter from Secretary Michael R. Pompeo, Department of State, to Chairman Eliot L. Engel, Committee on Foreign Affairs (Oct. 1, 2019).

⁵ Letter from Chairman Eliot L. Engel, Committee on Foreign Affairs, Chairman Adam B. Schiff, Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Deputy Secretary John J. Sullivan, Department of State (Oct. 1, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-10-01%20ELE%20ABS%20EEC%20TO%20DEPSEC%20SULLIVAN.pdf>).

⁶ Deposition Procedures for the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, Congressional Record, H4056 (May 9, 2014) (online at www.congress.gov/113/crec/2014/05/09/CREC-2014-05-09-pt1-PgH4056.pdf); Rules of the Committee on Oversight and Reform for the 116th Congress (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/COR%20Rules%20-%20passed.pdf>).

This rule is intended for exactly these types of circumstances—to prevent an agency head with an obvious conflict of interest, and who is directly implicated in the abuses we are currently investigating, from trying to prevent his own employees from coming forward to tell the truth to Congress.⁷

Having received no further response from the State Department, the Committees worked with your attorneys to schedule a voluntary transcribed interview for today at 9:30 a.m.

This morning, however—less than two hours before your interview was scheduled to begin—your attorneys informed our staff that a State Department official left a voicemail at 12:30 a.m. this morning advising that Ambassador Sondland was being directed not to appear before the Committee.

Later this morning, your attorneys provided to us a copy of a letter from the State Department that is dated October 7, 2019, but which was delivered to your attorneys only *after* you were scheduled to appear. The letter stated that the State Department ordered you not to appear for the interview “[b]ased on consultations with the White House.”⁸ The letter cited the same concerns raised by Secretary Pompeo in his letter on October 1, 2019, but it completely omitted any reference to the fact that the Committees already responded to those concerns on the same date.⁹

The Committees have not received any communication directly from the White House or the State Department about this matter. In light of Secretary Pompeo’s direct intervention to block your appearance before our Committees, we are left with no choice but to compel your appearance at a deposition pursuant to the enclosed subpoena.

Subpoena for Documents

With respect to the documents requested by the Committees, to date you have produced none. On October 1, 2019, your attorneys informed the Committees that you “will not be producing documents,” including “any emails, texts, or messages on services such as What’s

⁷ Letter from Letter from Chairman Eliot L. Engel, Committee on Foreign Affairs, Chairman Adam B. Schiff, Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Deputy Secretary John J. Sullivan, Department of State (Oct. 1, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-10-01%20ELE%20ABS%20EEC%20TO%20DEPSEC%20SULLIVAN.pdf>) (also warning of criminal and other penalties against those who prevent witnesses from providing information to Congress).

⁸ Letter from Undersecretary for Management Brian Bulatao, Department of State, to Robert Luskin, Paul Hastings LLP (Oct. 7, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/SondlandDOSLETTER.pdf>).

⁹ It is unclear what the actual reason was for the State Department’s decision to prohibit your testimony given that President Trump indicated that he personally—and not the State Department—blocked you from testifying because, in his view, it would be before “a totally compromised kangaroo court, where Republican’s rights have been taken away, and true facts are not allowed out for the public to see.” Donald J. Trump, Tweet (Oct. 8, 2019).

App [sic],” in your possession, custody, or control, even those that are “responsive” to the Committees’ request.¹⁰

Your counsel made several arguments to justify this action, but none is a valid basis to withhold responsive documents in your personal possession from the Committees.

Your counsel argued that “any request for these or other materials relevant to your inquiry must be directed in the first instance to the State Department.”¹¹ Of course, the Committees have made repeated attempts to obtain documents from the State Department voluntarily—followed by the issuance of a subpoena for documents that were due last Friday—but the State Department has refused to cooperate and has failed to produce a single document.¹² Secretary Pompeo’s obstruction of the House’s impeachment inquiry does not alleviate you of your independent legal obligation to produce to the Committees any responsive documents in your personal possession, custody, or control.

Your counsel also argued that you are “legally prohibited” from producing the documents in your possession to the Committees.¹³ The Committee on Oversight and Reform has jurisdiction over the Federal Records Act. There is nothing in the Act that prevents witnesses from cooperating with duly authorized demands from Congress. It appears that the only reason you are withholding documents is because the State Department—which is itself refusing to produce documents—has directed you to do so. This is not a valid basis to withhold documents in your personal possession, custody, or control from the Committees.

The Committees have obtained copies of multiple text message exchanges involving you, other State Department officials, and Ukrainian government officials that were not conducted on official government communications systems and that date back to at least June 2019. For example, the Committees have obtained WhatsApp messages from Ambassador Kurt Volker showing that you were directly involved in efforts to press Ukraine to announce publicly that it was pursuing investigations desired by President Donald Trump into the “2016 election” and “Burisma,” a Ukrainian gas company on whose board former Vice President Joseph Biden’s son, Hunter Biden, used to sit.¹⁴ The WhatsApp messages also indicate that you spoke directly to

¹⁰ Email from Robert Luskin, Paul Hastings LLP, to Staff, Permanent Select Committee on Intelligence, Committee on Foreign Affairs, and Committee on Oversight and Reform (Oct. 1, 2019).

¹¹ *Id.*

¹² Letter from Chairman Eliot L. Engel, Committee on Foreign Affairs, Chairman Adam B. Schiff, Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Michael R. Pompeo, Department of State (Sept. 27, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-09-27.EEC%20Engel%20Schiff%20to%20Pompeo-%20State%20re%20Document%20Subpoena.pdf>).

¹³ Email from Robert Luskin, Paul Hastings LLP, to Staff, Permanent Select Committee on Intelligence, Committee on Foreign Affairs, and Committee on Oversight and Reform (Oct. 1, 2019).

¹⁴ Letter from Chairman Adam B. Schiff, Permanent Select Committee on Intelligence, Chairman Eliot L. Engel, Committee on Foreign Affairs, and Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Members, Permanent Select Committee on Intelligence, Committee on Foreign Affairs, and Committee on Oversight and Reform (Oct. 3, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Chairmen%20Letter%20on%20Sta>

President Trump during the period when you and other officials were trying to convince Ukraine to announce publicly that it would pursue these political investigations. Unlike Ambassador Volker, however, you have refused to produce to the Committees these highly relevant documents from your non-official electronic messaging systems.

The Federal Records Act prohibits any employee of a federal agency from creating or sending a record using a non-official electronic messaging account unless the employee copies the employee's official electronic messaging account or "forwards a complete copy" to the employee's official electronic messaging account "not later than 20 days after the original creation or transmission of the record."¹⁵

The text messages obtained by the Committees show that you communicated extensively about official business using non-official messaging accounts. It appears that you may not have taken steps to ensure that these messages were captured by an official records system at the State Department within the legally required time period. Indeed, it appears that you may have failed to do so until the Committees sought your records in connection with this impeachment inquiry. In his October 1 email, your counsel told the Committees that you "*will* certainly fulfill [your] obligations" under the Department's record-keeping regulations, which suggests that you had not already done so at the time the Committees sent their request on September 27.¹⁶ This raises serious questions about whether you and the State Department fully complied with your legal obligations under the Federal Records Act.

In addition, the Committees' request included documents from before you became a State Department employee. The time frame for the request is "January 20, 2017, to the present." You did not become an employee of the State Department until late June 2018. You did, however, have prior connections to President Trump as a private citizen. For example, you served as a state co-chair for his 2016 presidential campaign, and you donated \$1 million to the President's inaugural committee.¹⁷

There is no valid basis to withhold documents from the Committees by relying on instructions from Secretary Pompeo, who is a fact witness in this inquiry and who is currently defying his own duly issued subpoena for documents—particularly if the Department's goal is to block the Committees from gaining access to your documents prior to your testimony.

te%20Department%20Texts%2010-03-19.pdf).

¹⁵ 44 U.S.C. § 2911.

¹⁶ Email from Robert Luskin, Paul Hastings LLP, to Staff, Permanent Select Committee on Intelligence, Committee on Foreign Affairs, and Committee on Oversight and Reform (Oct. 1, 2019).

¹⁷ *Seattle Hotelier Ambassador Gordon Sondland Made Himself a Central Figure in Trump-Ukraine Controversy*, Seattle Times (Oct. 5, 2019) (online at www.seattletimes.com/seattle-news/politics/how-seattle-hotelier-ambassador-gordon-sondland-was-thrust-into-trump-ukraine-controversy/).

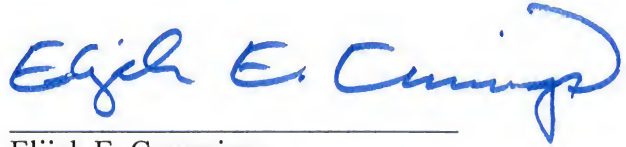
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Please contact staff for the Permanent Select Committee on Intelligence at (202) 225-7690 with any questions.

Sincerely,



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



Elijah E. Cummings
Chairman
House Committee on Oversight and Reform



Eliot L. Engel
Chairman
House Committee on Foreign Affairs

Enclosure

cc: The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Jim Jordan, Ranking Member
House Committee on Oversight and Reform

The Honorable Michael McCaul, Ranking Member
House Committee on Foreign Affairs